



Legislation Text

File #: 17-2211, Version: 3

**ORDINANCE AMENDING THE GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TITLE II, ADMINISTRATION, CHAPTER 24, PERSONNEL PRACTICES AND POLICIES, TO ADOPT A NEW ARTICLE 12, ENTITLED ANTI-SEXUAL HARASSMENT POLICY.**

[Enter Body Here]

**WHEREAS**, while the City of Newark has had a Sexual Harassment Personnel Policy governing the conduct of its employees in place for several decades, the policy has been in the form of a personnel document (PDP-44, Revised March 1, 1994); and

**WHEREAS**, while that personnel policy expressly forbids sexual harassment in the workplace, it is incumbent upon the elected representatives of the City of Newark to raise the prohibition to the form of an ordinance to ensure that the policy is uniformly and powerfully enforced; not to regulate morality or to encroach on the personal life of its employees, but to demonstrate a strong commitment to maintaining a workplace free of sexual harassment.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**Note: Additions are shown as bold and underlined and deletions are shown as ~~strikethrough~~.**

Section 1. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are hereby amended to include a new Section in Title II, General Administration, entitled: Anti-Sexual Harassment Policy.

- 1. Policy Prohibiting Sexual Harassment. Sexual harassment is a form of sexual discrimination. It is a policy of the City of Newark to prohibit the sexual harassment of a City of Newark employee by another employee, management representative, union representative, volunteer or vendor. A sexual harassment victim can be of the opposite sex or the same sex as the harasser. It is unlawful to harass a person (an applicant or employee) because of that person's sex. Therefore, sexual harassment in the workplace or at any location at which City-sponsored activities take place are hereby prohibited and shall constitute a violation of this ordinance. The City's current anti-sexual harassment policy set forth in personnel document PDP-44 is incorporated herein. This Ordinance adopts and supplements the City's current policy.**

**Definition. Sexual Harassment shall be defined as follows: In employment, sexual harassment is defined as any unwelcome sexual advances or requests for sexual favors or conduct of a nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis**

**for any employment decision; or (3) such conduct substantially interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.**

**Examples of sexual harassment include:**

- **Repeated, unwelcome sexually suggestive comments, gestures, emails, or pictures.**
- **Unwelcome physical contact of a sexual nature.**
- **Request for sexual favors in exchange for an employment benefit.**
- **Subtle or direct threats that a sexual or personal relationship is required for employment, promotion, or other favorable treatment in the workplace.**

**Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). (Guidance on harassment as set forth on the U.S. Equal Employment Opportunity Commission website)**

**The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.**

**A City employee who believes that she or he has been subject to sexual harassment, or who witnesses others being subjected to such harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the Director of Personnel or to any other persons designated to receive such workplace discrimination complaints. It is a violation of this ordinance to retaliate against a person who reports sexual harassment in the workplace.**

**Independent contractors, contracted by the City of Newark, who engage in sexual harassment shall be subject to contract termination**

**Appropriate accommodations to protect City employees from sexual harassment by clients include, but are not limited to, posting of anti-sexual harassment notice**

advising employees of their right to a harassment-free workplace.

2. Conflict with Collective Bargaining Agreements. Should there be a conflict between this ordinance and current enforceable Collective Bargaining Agreements between the City and the various collective bargaining units, the provisions of the Collective Bargaining Agreements shall supersede any requirements under this ordinance unless doing so would violate a federal, state or local law.

Collective Bargaining Agreements entered into between the City and various collective bargaining units, after the date of enactment of the Ordinance, shall conform to the requirements of this Ordinance.

3. Training. The City of Newark shall provide and conduct sexual harassment related training to all City employees, along with the Municipal Council members, their staff, the Office of the City Clerk, all appointed officials, including Deputy Mayors annually.

Upon being promoted to a supervisor or managerial position, the newly promoted employee will attend an annual training class for supervisors and managers on sexual harassment, regardless of the date of their most recent sexual harassment policy training as an employee. The Division of Personnel shall make available the management training bi-annually.

The Division of Personnel shall be responsible for formulating and coordinating the training program on anti-sexual harassment.

Each department shall be responsible for ensuring that its employees are trained in accordance with the direction provided by the Division of Personnel, and in keeping and maintaining accurate records of attendance.

4. Non-Confidentiality of Settlements/Non-Funding by City of Newark. No settlement of any claim of sexual harassment can be subject to any agreement of confidentiality on the part of the victim or the City or the alleged harasser. The settlement agreements, whether approved by Municipal Council or the subject of a settlement order by the Corporation Counsel, shall be available for production through the Open Public Records Act.
5. Sexual Harassment Task Force. There shall be established a Sexual Harassment Task Force to investigate sexual harassment claims brought to it by any City of Newark employee. Sexual harassment complaints shall be investigated and discipline, if any, shall be recommended to the Director of Personnel. The employee may seek resolution of their allegations pursuant to PDP-44 or the Task Force, but

not both.

The Sexual Harassment Task Force will have the following structure:

- (a) Members, Selection Process. The City of Newark shall accept applications for the Task Force in accordance with its Open Appointments ordinance (2:2-14 et seq.). Applications and job descriptions will be available on the City's website.

The Sexual Harassment Task Force (hereinafter referred to as the "Task Force") shall consist of five (5) members, all appointed by the Mayor with advise and consent of the Municipal Council: One (1) member who shall be a retired, member of law enforcement (not the City of Newark); one (1) member of the clergy; two (2) members from the City of Newark's general population, not employed by the City of Newark or any other related entities (i.e., the Housing Authority or the Newark Community Economic Development Corporation); the Mayor shall accept one (1) nomination from S.O.F.I.A or Rutgers University, which individual shall be a member or representative in good standing with said organization, for consideration for appointment to the Task Force by the Mayor with advice and consent of Municipal Council.

In selecting representatives to serve on the Task Force, the Mayor and Municipal Council are encouraged to consider potential members' professional experience in law, women's rights, human rights, and civil rights. Candidates shall provide the Mayor with their

resume and any other submissions that establish the candidate's qualifications to be appointed to the Task Force and such information shall be provided to the Municipal Council for its review and consideration. The Mayor shall retain the authority to remove any member from the Task Force for cause and accept applications from the general public for consideration and appointment with the advice and consent of the Municipal Council. Any member of the clergy appointed to the Task Force shall represent the public interest and may not render decisions based on any personal religious belief. All members of the Task Force shall be trained on confidentiality, ethics, and sexual harassment annually.

- (b) Term of Membership. The term of the members shall be three years, except that of the members first appointed, three (3) shall be appointed for terms of one year and two (2) shall be appointed for terms of two years. No member of the Task Force shall be paid a salary.
- (c) Vacancy. In the event of a vacancy on the Task Force during the term of office of a member, by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

The Sexual Harassment Task Force shall have legal counsel, hired by the Task Force, and appropriation of funding through the Division of Personnel. The selection of an attorney shall be in compliance with Local Public Contracts Law. The attorney's responsibilities shall include the actual investigation of any claim. If the alleged harasser refuses to participate in the investigation, the findings of the Task Force based upon the evidence presented by the employee shall be forwarded to the Division of Personnel.

Complaint Process:

1. The attorney shall conduct the initial interview of the complainant.
2. The attorney will provide a copy of the signed complaint form to the complainant.
3. The attorney will notify the Task Force, in writing, that a complaint has been filed and will be investigated.
4. The attorney will provide the complainant with written acknowledgement of the receipt of the complaint and include any further appropriate appeals rights.

Investigation Process:

1. The attorney will conduct an immediate investigation of the complaint. Interviews will be conducted with the complainant, followed by witnesses, and then with the alleged harasser.
2. The interviews should elicit specific facts pertinent to the sexual harassment claim, including, but not limited to, dates, places, witnesses, alleged injuries, the impact of the harassment upon the employee's job performance, the need for potential employee protection, professional counseling and other assistance deemed necessary and/or appropriate.
3. The attorney should determine whether there are other sources of corroborating evidence to support the claims of sexual harassment. Witnesses named by the complaining party and unnamed co-workers in a position to observe the events in

question are potential sources of such information. Interviewees should be instructed that the investigation is being conducted in as confidential manner as possible and should only be told what they need to know in order to enable them to provide useful information.

4. During the course of the investigation, the attorney is responsible for informing each individual involved of the necessity to maintain confidentiality throughout the course of the investigation. The attorney must emphasize to all involved, including the complainant, the accused and the witnesses, of the confidential nature of the inquiry and must discuss the implications of divulging information related to the investigation, with specific reference to

potential defamation claims, lawsuits, and/or disciplinary action that may occur as a result of unauthorized discussion of the case.

At the conclusion of the investigation, the attorney must submit a complete written report to the Task Force.

The Task Force shall report its findings of fact to the Director of Personnel and, absent clear error, the Director of Personnel shall accept those findings as fact. The Director of Personnel shall make all disciplinary decisions and take into consideration the Task Force's conclusion. The Director of Personnel shall make final decision on whether to proceed.. The discipline imposed will vary according to the severity of the sexual harassment and the record of the harasser in accordance with N.J.A.C. 4A:2-1.1, et seq.

If the Task Force is not satisfied with any portion of the investigation, including a finding of no probable cause, they may direct additional steps be taken to ensure the completeness of the investigation. Any remedial action which may recommend disciplinary action shall direct the Director of Personnel to proceed in accordance with N.J.A.C. 4A:2-1.1, et seq.

The Task Force shall also have the ability to make recommendations to the City of Newark regarding the subject matter of preventing and remedying sexual harassment in the workplace. A quarterly report shall be filed with the Business Administrator and the Municipal Council. No confidential information shall be contained in the report. The Task Force, upon initial formation, shall adopt Rules of Order for the conduct of their meetings and deliberations. However, the deliberations of the Task Force and the recommendations shall be considered confidential personnel proceedings. All members of the Task Force are required to sign a Non-Disclosure/Confidentiality Agreement.

6. Resolution outside municipality. The purpose of this ordinance is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied with the City's administration. Nothing in this Ordinance is intended to supersede or impede an employee's right to contact the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint.
  
7. Access to Reports and Documents. All records of complaints, including contents of meetings, results of investigations and other relevant material will be kept confidential by the City of Newark except where disclosure is required under disciplinary or other remedial processes. Neither the Task Force nor attorney shall have access to personnel records of complainant, harasser or witnesses.

Section 2. Any prior ordinances or parts thereof inconsistent herewith are hereby repealed and superseded by the Ordinance.

Section 3. If any part of this Ordinance is declared unconstitutional or illegal, the remaining provisions shall continue in full force and effect.

Section 4. This Ordinance shall take effect upon final passage and publication in accordance with the Laws of the State of New Jersey.

### **STATEMENT**

Ordinance amending Title II, Administration, Chapter 24, Personnel Practices and Policies, to adopt a new Article 12, entitled Anti Sexual Harassment Policy which prohibits sexual harassment in the workplace and establishes a Sexual Harassment Task Force, which shall be an alternative investigation and recommending body.